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Filing date: **12/29/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91195262
Party	Defendant World Gourment Marketing LLC
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Submission	Answer
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Date	12/29/2010
Attachments	SENSIBLE PORTIONS (Answer to Combined Oppos. & Petition to Cancel).pdf (8 pages)(295035 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In re:

Trademark: SENSIBLE PORTIONS

Application Serial Nos.: 77/833,401 and 77/833,386

Filing Date: September 23, 2009

Publication Date: February 16, 2010

Registration No: 3,915,083

Registration Date: January 2, 2007

Applicant/Registrant: World Gourmet Marketing, LLC

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SENSIBLE FOODS, LLC
Opposer

v.

Opposition No.: 91195262

WORLD GOURMET MARKETING, LLC

Cancellation No.: 92053083

Applicant/Registrant.

-----X

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

APPLICANT'S/REGISTRANT'S ANSWER AND DEFENSES TO COMBINED
NOTICE OF OPPOSITION AND PETITION TO CANCEL

Applicant/Registrant World Gourmet Marketing, LLC ("Applicant"), by its counsel, responds as follows to the Combined Notice of Opposition and Petition to Cancel ("Opposition"):

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 5 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
6. Applicant admits the allegations set forth in Paragraph 6 of the Opposition.
7. Applicant admits the allegations set forth in Paragraph 7 of the Opposition.
8. Applicant denies the allegations set forth in Paragraph 8 of the Opposition, but avers that the filing basis of Application No. 77/833,386 is Section 1(b) of the Lanham Act.
9. Applicant admits the allegations set forth in Paragraph 9 of the Opposition.
10. Applicant denies the allegations set forth in Paragraph 10 of the Opposition, but avers that the filing basis of Application No. 77/833,401 is Section 1(a) of the Lanham Act.
11. Applicant admits the allegations set forth in Paragraph 11 of the Opposition.
12. Applicant admits the allegations set forth in Paragraph 12 of the Opposition.
13. Applicant denies the allegations set forth in Paragraph 13 of the Opposition, but avers that on November 29, 2006, Applicant filed a statement of use in connection with Registration No. 3,195,083, and in such statement of use, Applicant claimed a date of first use of July 1, 2003, which is prior to the date Applicant submitted for its intent-to-use Application No. 78/596,051.
14. Applicant admits the allegations set forth in Paragraph 14 of the Opposition, but avers that no such consent or authorization is necessary.
15. Applicant admits the allegations set forth in Paragraph 15 of the Opposition, but avers that no such consent or authorization is necessary.
16. Applicant denies the allegations set forth in Paragraph 16 of the Opposition.

17. Applicant denies the allegations set forth in Paragraph 17 of the Opposition.
18. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 18 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
19. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 19 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
20. Applicant admits that its marks are applied for and/or registered in connection with goods in International Classes 5, 29, 30, and 32, but denies the remaining allegations set forth in Paragraph 20 of the Opposition.

COUNT ONE

LIKELIHOOD OF CONFUSION UNDER 15 U.S.C. § 1052(d)

21. Applicant repeats and realleges each and every preceding response as if fully set forth herein.
22. Applicant denies the allegations set forth in Paragraph 22 of the Opposition.
23. Applicant denies the allegations set forth in Paragraph 23 of the Opposition.
24. Applicant denies the allegations set forth in Paragraph 24 of the Opposition, but avers that on or about April 19, 2007, Applicant initiated a limited, Class III recall of its All Natural Multi Grain Crisps Cheddar flavored snacks from distribution in the State of New Jersey.

COUNT TWO

SUGGESTION OF FALSE CONNECTION UNDER 15 U.S.C. § 1052(a)

25. Applicant repeats and realleges each and every preceding response as if fully set forth herein.
26. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 26 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
27. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 27 of the Opposition, and therefore denies the same and leaves Opposer to its proofs.
28. Applicant admits the allegations set forth in Paragraph 28 of the Opposition.

29. Applicant denies the allegations set forth in Paragraph 29 of the Opposition.
30. Applicant denies the allegations set forth in Paragraph 30 of the Opposition.
31. Applicant denies the allegations set forth in Paragraph 31 of the Opposition.
32. Applicant denies the allegations set forth in Paragraph 32 of the Opposition.

COUNT THREE

EXAMINING ATTORNEY SHOULD HAVE REJECTED REGISTRATION UNDER 15 U.S.C. § 1064(1), (3)

33. Applicant repeats and realleges each and every preceding response as if fully set forth herein.
34. Applicant admits that on or about June 19, 2007 it filed Application No. 77/210,120 for the mark “SENSIBLE SNACKS.” To the extent the remaining allegations set forth in Paragraph 34 of the Opposition purport to characterize the contents of the application, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
35. Applicant admits that on September 21, 2007 it was mailed an office action in connection with Applicant’s Application No. 77/210,120. To the extent the remaining allegations set forth in Paragraph 35 of the Opposition purport to characterize the contents of the office action, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
36. To the extent the allegations set forth in Paragraph 36 of the Opposition purport to characterize the contents of the office action, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
37. To the extent the allegations set forth in Paragraph 37 of the Opposition purport to characterize the contents of the office action, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
38. Applicant admits that on April 28, 2008 it was mailed a notice of abandonment in connection with Applicant’s Application No. 77/210,120. To the extent the remaining allegations set forth in Paragraph 38 of the Opposition purport to characterize the contents of the notice of abandonment, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
39. To the extent the allegations set forth in Paragraph 39 of the Opposition purport to characterize the contents of the description of goods under Application Nos. 78/596,051

and 77/210,120 and Registration No. 3,195,083, the documents speaks for themselves, and Applicant denies any characterizations inconsistent therewith.

40. Applicant denies the allegations set forth in Paragraph 40 of the Opposition.
41. Applicant admits the allegations set forth in Paragraph 41 of the Opposition.
42. Applicant avers that the allegations set forth in Paragraph 42 of the Opposition are erroneous legal conclusions to which no response is required. To the extent a response is required, Applicant denies the allegations.

COUNT IV

APPLICANT/RESPONDENT IS BARRED FROM OBTAINING AND MAINTAINING REGISTRATION BEAUSE IT FAILED TO USE APPLICANT'S MARK IN COMMERCE IN CONNECTION WITH ALL THE GOODS LISTED IN THE APPLICATION AS OF THE CLAIMED DATE OF FIRST USE

43. To the extent the allegations set forth in Paragraph 43 of the Opposition purport to characterize the contents of Application Nos. 78/596,051 and 77/833,401 and Registration No. 3,195,083, the documents speaks for themselves, and Applicant denies any characterizations inconsistent therewith.
44. To the extent the allegations set forth in Paragraph 44 of the Opposition purport to characterize the contents of Application No. 78/596,051, the document speaks for itself, and Applicant denies any characterizations inconsistent therewith.
45. Applicant denies the allegations set forth in Paragraph 45 of the Opposition.
46. Applicant denies the allegations set forth in Paragraph 46 of the Opposition.

DEFENSES

FIRST DEFENSE

Opposer has failed to state a claim upon which relief may be granted.

SECOND DEFENSE

Opposer's claims are barred by the doctrines of laches, waiver, and estoppel.

THIRD DEFENSE

Opposer's claims are barred by the doctrine of unclean hands.

FOURTH DEFENSE

Opposer's claims are barred by accord and satisfaction.

FIFTH DEFENSE

Opposer's claims are barred, in whole or in part, by Applicant's prior use of Applicant's mark in numerous states across the country.

SIXTH DEFENSE

There is no likelihood of confusion between the Opposer's marks and the Applicant's marks.

SEVENTH DEFENSE

Opposer's mark is diluted and weak when used in connection with Opposer's goods and Opposer's purported rights extend no further than to the specified marks and goods subject to the registrations that Opposer alleges it owns. Opposer's mark is not the same as or confusingly similar to Applicant's mark in terms of appearance, connotation and/or pronunciation.

EIGHTH DEFENSE

Applicant's marks are sufficiently distinct from Opposer's marks to avoid confusion, deception or mistake as to the source or sponsorship or association of Applicant's goods.

NINTH DEFENSE

The Opposer's marks are merely descriptive, and should accordingly be afforded a very narrow scope of protection and should not pose an obstacle to the easily distinguishable marks of the Applicant.

TENTH DEFENSE

Applicant reserves the right to amend this pleading to assert any additional defenses that it may learn of during the discovery period.

CLAIM FOR RELIEF

WHEREFORE, Applicant respectfully requests the following relief:

- (a) judgment in Applicant's favor dismissing the Opposition with prejudice and denying each and every prayer for relief contained therein;
- (b) approval of Application Serial Nos. 77/833,401 and 77/833,386 and registration of the marks therein; and
- (c) such other and further relief as the TTAB deems just in the circumstances.

Respectfully submitted,

World Gourmet Marketing, LLC

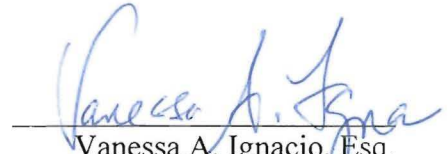
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Date: December 29, 2010

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Answer and Defenses to Combined Notice of Opposition and Petition to Cancel has been electronically filed with the United States Trademark Trial and Appeal Board and served on the Pro Se Attorney of Record by mailing said copy on this Answer and Defenses, via United States Postal Service:

Mr. John Rarick
Vice President
Sensible Foods, LLC
P.O. Box 750832
Petaluma, CA 94975



Vanessa A. Ignacio, Esq.